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CHARLES ELMORE

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1929.

No. 39.

J. R. WHEELER, PETITIONER,

vs.

HOWARD GREENE, RECEIVER OF THE BANKERS JOINT STOCK LAND BANK OF MILWAUKEE, WISCONSIN, RESPONDENT.

PETITION FOR REHEARING.

EDWIN S. MACK,
ARTHUR W. FAIRCHILD,
J. GILBERT HARDGROVE,
Counsel for Respondent.

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PETITION FOR REHEARING.

Comes now the above named Howard Greene, Receiver of the Bankers Joint Stock Land Bank of Milwaukee, Wisconsin, and presents this his petition for a rehearing of the above entitled cause, and, in support thereof, respectfully shows:

This Honorable Court decided, in its opinion rendered on November 4, 1929, that the Circuit Court of

Appeals erred in holding that the Federal Farm Loan Board could levy an assessment and its Receiver could maintain suit to enforce the stockholders' liability created by statute. The reasons stated in the opinion are substantially as follows:

1. The section (§29, Code* §§961, 963) of the Federal Farm Loan Act that deals with insolvency of farm loan associations and joint stock land banks provides for the appointment of a receiver by the Farm Loan Board and states his duties and powers, but has no such provision as that found in the earlier National Bank Act (Code, Tit. 12, §192) which states that the receiver "may, if necessary to pay the debts of such association, enforce the individual liability of the stockholders." When so important a grant of power contained in the prototype is left out from the copy it is almost impossible to attribute the omission to anything but design.

2. There is a plain reason for the difference. The national banks issue notes that constitute an important part of the currency of the country and that the United States has an interest in seeing paid.

3. Joint stock land banks are created to make loans on farm mortgages to members of an association in a territorially limited district, and are relatively local affairs.

4. There is not the same need that the stockholder's liability should be summarily disposed of behind his back in Washington rather than by the usual proceeding of a bill in equity which is brought in the neighborhood, in which the stockholder can be heard, and by which the assessment

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*References to Title 12, United States Code, are given as Code.

instead of 100 per cent can be adjusted to the specific case. And, to say the least, the bill in equity is the most likely way of reaching that result.

5. The general grant of powers in the Act is inadequate to supply this omission from the express statement of the procedure in insolvency.

GROUNDS FOR REHEARING.

This respondent respectfully submits that:

FIRST, joint stock land banks do not make loans through national farm loan associations; they are not relatively local affairs; their bonds are widely distributed and were outstanding in the hands of investors as of December 31, 1928, in the amount of $647,632,700, or nearly the same as the outstanding national bank currency at that time.

SECOND, the United States has at least as great an interest in seeing the bonds of joint stock land banks paid as in the case of national bank notes.

THIRD, the omission of the phrase, "and may, if necessary to pay the debts of such association, enforce the individual liability of the stockholders" from §29 of the Federal Farm Loan Act does not curtail the powers of the Federal Farm Loan Board, in view of other provisions of the same section.

FOURTH, a single bill in equity could not accomplish the enforcement of the liability of stockholders of such banks who are widely scattered in every part of the United States and possibly foreign countries; and the Federal Farm Loan Board does not make a 100 per cent assessment against stockholders unless such assessment is necessary to pay the debts of the Bank.

OBJECT AND PERTINENT PROVISIONS OF THE FEDERAL FARM LOAN ACT.

Preliminarily the respondent begs to call attention to the scope and design of the Federal Farm Loan Act.

In view of the pressing needs of agriculture, the problem which presented itself to the Congress was how to provide a means of affording the necessary credit on a large scale to farmers on the security of land mortgages at low rates of interest (Document No. 494, House of Representatives, 64th Congress, First Session).

The report of the Joint Committee on Rural Credits presenting this Act was prepared after extensive study of the situation. It showed that the primary considerations which the Committee had in mind in the proposed legislation were, "1. Absolute safety and attractive income to the investor; 2. Low interest rates, long term mortgages, and amortization payments for the farmer; 3. Low cost of administration; 4. Simplicity of organization and operation; 5. Adaptability to every part of the country; 6. Stimulation to the cooperative spirit." (64th Congress, 1st sess. Vol. 144, House Documents, pages 8 and 17.) Under the proposed system Government control was assured by the creation of the Federal Farm Loan Board, independent and non-partisan, appointed by the President, and paid from the public treasury.

This Court in sustaining the constitutionality of the Federal Farm Loan Act (Smith *v.* Kansas City Title & Trust Co., 255 U. S. 180) pointed out that the Act is entitled:

"An act to provide capital for agricultural development, to create standard forms of investment based upon farm mortgage, to equalize rates of interest upon farm loans, to furnish a market for United States bonds, to create government depositories and financial agents for the United States, and for other purposes."

The Federal Farm Loan Bureau is "*charged with the execution of this chapter* * * * under the general supervision of a Federal Farm Loan Board." (Code, §651.)

Classes of Land Banks.

The Farm Loan Act created two distinct classes of land banks:

(1) Joint Stock Land Banks which make mortgage loans directly to individual borrowers whose lands are situated in the chartered territory of such banks, and are not empowered to make loans through national farm loan associations;

(2) Federal Land Banks which make mortgage loans chiefly through cooperative national farm loan associations (Code, §671).

As to Joint Stock Land Banks, it is provided that:

"No loans shall be made which are not secured by first mortgages on farm lands within the State in which such joint stock land bank has its principal office, or within some one State contiguous to such State." (Code, §818.)

The Federal Land Banks operate throughout the United States in twelve districts which are known as Federal Land Bank Districts. (Code, §671.)

Capitalization.

Joint Stock Land Banks. The minimum amount of stock of a joint stock land bank is fixed at $250,000. Borrowers from such banks are not required to subscribe for stock. The stock is bought and sold in the public markets and is, therefore, owned by individuals residing in all parts of the United States and in all probability by residents in foreign countries.

The stockholders are individually responsible, equally and ratably and not one for the other, for all contracts, debts and engagements of the bank. (Code, §812.)

Federal Land Banks. The capital stock of a Federal land bank is divided into shares of $5 each and may be subscribed for and held by any individual, firm, or corporation, or by the Government of any State, or of the United States (Code, §692). Subsequent sections provide for subscriptions to the stock of the bank by national farm loan associations. (Code §721.) With very limited exceptions, Federal land banks may loan only through national farm loan associations. (Code §§791; 801.)

There is no individual liability in connection with the stock of a Federal land bank.

Farm Loan Associations. These associations are corporations chartered by the Federal Farm Loan Board to enable their members to obtain loans from the Federal land banks. The stock must be subscribed for by member-borrowers owning farms in the chartered territory of the association. The stock of national farm loan associations can be transferred only to individuals who assume the mortgage and stock

interests of the owner (Code, §771). The members are subject to the same liability that is imposed by Code, §812, on the stockholders of joint stock land banks.

Dissolution and Appointment of Receivers.

Section 29 of the Federal Farm Loan Act (Code, §§961, 962, 963, 964, 965, and 966) provides for the voluntary and involuntary dissolution of national farm loan associations, Federal land banks, and joint stock land banks, and for the appointment of Receivers. This section also provides that upon default of any obligation, Federal land banks and joint stock land banks may be declared insolvent and placed in the hands of a Receiver by the Federal Farm Loan Board, and proceedings shall thereupon be had in accordance with the provisions of the same section regarding national farm loan associations.

I.

Joint Stock Land Banks Do Not Make Loans Through National Farm Loan Associations and Are Not Local in Their Nature.

(A) There is no interlocking relation between joint stock land banks and national farm loan associations; the provisions for loans through farm loan associations extend only to federal land banks. (Code §§721; 733; 741; 742; 761.)

(B) Joint stock land banks were designed to operate on a large scale and were intended to have a nationwide distribution of their securities.

(1) The minimum amount of capital stock of a joint stock land bank is fixed at $250,000 (Code, §§11, 815). It is sold to investors privately and in the public markets and bonds may be issued to the extent of fifteen times the capital and surplus of the bank.

(2) Joint stock land banks have sold to investors privately and in the public markets stock aggregating $41,735,610.24, and bonds aggregating the amount of $647,632,700.00 as of December 31, 1928, were outstanding in the hands of investors (Annual Report for 1928 to Congress by the Federal Farm Loan Board) which is nearly the same as the outstanding National bank currency at that time. As of the same date bonds of Federal land banks outstanding in the hands of investors totaled $1,177,446,960.

(3) A joint stock land bank "when designated for that purpose by the Secretary of the Treasury shall be a depository of public money * * * and they may also be employed as financial agents of the Government." (Code §697.)

(4) The statutes promote the circulation of joint stock land bank bonds by:

Providing that they shall state on their face that the banks are under Federal supervision (Code, §821);

Expressly authorizing their issuance in bearer form (Code, §§861, 864);

Giving them tax exemption (Code, §931);

Making them lawful investments of all fiduciary and trust funds (Code, §941);

Designating them as security for all public deposits (Code, §941);

Authorizing Federal land banks and joint stock land banks to invest amortization payments and other funds in them (Code, §897);

Authorizing member banks of the Federal Reserve System to buy and sell them (Code, §941); and

Expressly entailing on the Farm Loan Board the "duty * * * of advising investors of the merits and advantages of Farm Loan Bonds" (Code, §664).

II.

The Interest of the United States in Seeing the Bonds of Joint Stock Land Banks Paid.

The extent to which the Congress went in promoting the circulation of joint stock land bank bonds in itself indicates the strong interest that the United States has in these bonds. This interest was expressed in the strongest possible way by expressly making the bonds instrumentalities of Government. (See Smith *v.* Kansas City Title and Trust Company, 255 U. S. 180.)

It was an extraordinary thing for the United States to provide for bonds of this kind and to give them distribution not only by tax exemption and Government supervision but also by authorizing them to be security for public deposits. Further than this the Congress went into an unusual field by making these bonds lawful investments for trust funds, and then further sought to induce investment in them by expressly entailing on the Board the duty of promoting their sale by advice as to their merits and advantages.

It is respectfully submitted that the interest of the United States in the payment of these bonds is at least as great as its interest in the payment of National bank notes. In fact, it is practically impossible that

the statutory liability of National bank stockholders ever will be invoked to indemnify the United States on National bank notes, because not only are National bank notes secured by United States bonds of their par value (Code, §101) but in addition the United States has the first and paramount lien on all the assets of a National bank for its protection. (Code, §137.)

It is submitted that these facts show not only that joint stock land banks are national in character but also that their maintenance, operation, and dissolution constitute a public trust.

III.

The omission of the phrase, "and may, if necessary to pay the debts of such association, enforce the individual liability of the stockholders," from §29 of the Federal Farm Loan Act.

The Court in its opinion states:

> "When so important a grant of power contained in the prototype is left out from the copy it is almost impossible to attribute the omission to anything but design."

We think the omission is attributable to design but we submit that when a careful comparison is made of the prototype and the copy it will appear that the Federal Farm Loan Board was intended to have as full power with respect to the administration of the receivership and the payment of the bank's obligations as would have been afforded by a court of competent jurisdiction in the absence of statute. This compar-

ison can best be made by showing the two sections in parallel columns.

Comparison of the Two Sections.

§192 (the National Bank Act), in the right column, is designated as the prototype, and §961 (the Federal Farm Loan Act), placed in the left-hand column, is designated as the copy. The deviations in the copy are put in italics and the important deviations numbered for convenient reference. The provisions of these two sections not necessary for this comparison have been omitted.

Joint Stock Land Banks §§961, 962.	**National Banks §192**
Copy.	**Prototype.**
"§961. (1) *Upon receiving satisfactory evidence that any national farm loan association* [or joint stock land bank] *has failed to meet its outstanding obligations of any description* (2) *the Federal Farm Loan Board* may forthwith *declare such association insolvent* and appoint a receiver and require of him such bond and security as it deems proper. Such receiver, under the direction of the *Federal Farm Loan Board*, shall take	"§192. (1) On becoming satisfied, as specified in sections 131 and 132, that any association has refused to pay its circulating notes as therein mentioned, and is in default, the Comptroller of the Currency may forthwith appoint a receiver, and require of him such bond and security as he deems proper. Such receiver, under the direction of the comptroller, shall take possession of the books, records, and assets of every de-

Copy.

possession of the books, records, and assets of every description of such association, collect all debts, dues, and claims belonging to it, and, (3) *with the* approval of the Federal Farm Loan Board, or upon the order of a court of record of competent jurisdiction, may sell or compound all bad or doubtful debts, and, (4) on a like *approval or order,* may sell all the real and personal property of such association (5) on such terms as the *Federal Farm Loan Board* or said court shall direct."

"§962. Such Receiver shall pay over all monies so collected to the Treasurer of the United States, subject to the order of the Federal Farm Loan Board, and also make report to said board of all his acts and proceedings."

Prototype.

scription of such association, collect all debts, dues, and claims belonging to it, and, (3) upon the order of a court of record of competent jurisdiction, may sell or compound all bad or doubtful debts, and, (4) on a like order, may sell all the real and personal property of such association, (5) on such terms as the court shall direct; *and may, if necessary to pay* the debts of such association, enforce the individual liability of the stockholders. Such receiver shall pay over all money so made to the Treasurer of the United States, subject to the order of the comptroller and also make report to the comptroller of all his acts and proceedings."

The important differences which have been noted in the foregoing comparison are as follows:

Copy	*Prototype*
The Copy provides:	Section 961 provides:
1. "Upon receiving satisfactory *evidence.*"	1. "On becoming satisfied," and specifies the kind and character of the evidence upon which the Comptroller of the Currency may act.
2. The Federal Farm Loan Board may *declare* joint stock land bank *insolvent.*	2. No such declaration by the Comptroller.
3. The Board may, without the order of a court of record, empower its receiver to sell or compound all bad or doubtful debts.	3. The Comptroller has no such power.
4. The Board may, without the order of a court of record, direct its receiver to sell all real and personal property of the insolvent bank.	4. The Comptroller has no such power.
5. The Board may fix the terms of such sales of property as it may direct.	5. The Comptroller has no such power.

In other words, the powers of the Federal Farm Loan Board in this respect are equal to those of a court of equity, whereas the like powers of the Comptroller of the Currency are limited. A national bank receiver can sell or compound all bad or doubtful debts, only upon the order of a court of competent jurisdiction, and only on like order may he sell all the real and personal property of such association. Under the powers given the Federal Farm Loan Board, an account may be stated showing the net difference, if

any, between a joint stock land bank's assets and liabilities. Only an arithmetical calculation is necessary in order to determine the proportionate part of such deficit that is due from each individual shareholder. Finally when the Board has made this calculation carefully and fairly as it must do, there is nothing left for a court of record to determine.

This determination was made in the case of the Bankers Joint Stock Land Bank, as shown on page 39 of the Twelfth Annual Report of the Federal Farm Loan Board, which it is required to make by §661 of the Code to the Speaker of the House of Representatives.

The statement in question reads as follows:

> "Bankers Joint Stock Land Bank of Milwaukee."
> "The receiver's valuations of the assets of this bank, as stated in the last annual report, showed a deficit exceeding the amount of its entire capital stock, and accordingly an assessment was levied, on January 11, 1928, upon the stockholders of the bank for $1,200,000, or 100 per cent of the capital stock of the bank." . .

The same annual reports of the Federal Farm Loan Board show that the Federal Farm Loan Board proceeded in like manner in making assessments against the stockholders of the Kansas City Joint Stock Land Bank of Kansas City, Missouri, and the Ohio Joint Stock Land Bank of Cincinnati, Ohio, on the basis of valuations made by the Receivers of those Banks. These three joint stock land banks are the only banks in the Farm Loan System for which receivers have been appointed.

The receiver appointed by this board must of necessity be its officer to carry out its proper orders. The power to direct the receiver of an insolvent corporation to collect the amount, if any, due from its stockholders is a necessary incident to the duties specifically imposed upon it with respect to the administration of a receivership and the liquidation of the bank. However, it is submitted that the Congress did not leave this important question to inference. Code §831 which defines the general powers of the Board contains the following provision:

> "(j) To exercise such incidental powers as shall be necessary or requisite to fulfill its duties and *carry out the purposes of this Act.*" (Italics ours.)

Reading this subsection in the light of the purposes expressed in the title of the Act and bearing in mind that the Board has power to do every act necessary for the determination of the deficiency which arithmetically determines the stockholders' liability, it follows that the incidental powers of the Board to fulfill its duties and carry out the purposes of the Act must include the power to make the computation of the amount of assessment against the stockholders and enforce its collection.

The Comptroller of the Currency cannot make all of the important determinations leading up to a complete liquidation without the order of a court of record or without the concurrence of the Secretary of the Treasury (Code, §§192, 132), and, therefore, the Congress naturally added the phrase that the receiver of a National bank "may, if necessary to pay the debts

of such association, enforce the individual liability of the stockholders." The power of the Comptroller to make and fix the amount of the assessment must be implied, as it is nowhere expressed.

It is submitted that even though it was considered by the Congress necessary to empower a national bank receiver to collect assessments against stockholders, it was not necessary, in view of the other provisions of the Federal Farm Loan Act, to give the Board's receiver this power explicitly.

IV.

The Broad Distribution of the Capital Stock of Joint Stock Land Banks.

In view of the wide distribution of the stock the enforcement of the stockholders' liability by suit in equity would be more than ordinarily inefficient and expensive. Only a limited number of stockholders could be served with process in the initial suit, and ancillary suits and receiverships would be required in numerous jurisdictions. It would result in more than duplicating the machinery for the liquidation of the Bank by adding to the single receivership created by the Board a court receivership for a limited purpose in every jurisdiction where stockholders might be found.

It is submitted that the Congress could not have intended so difficult and cumbersome a procedure to enforce payment of these obligations, to say nothing of the difficulties that would be added by such procedure in enforcing the liability of stockholders residing outside of the United States.

This view is emphasized by the fact that the authorization of the Secretary of the Treasury to use joint stock land banks as depositories of public moneys contemplates the United States as a creditor of these banks. It is submitted further that the Congress could not have intended that the United States Government would have to go through this complicated procedure of numerous suits in equity to enforce its rights as a creditor rather than to proceed through the instrumentality of the single statutory receiver provided for in the Act.

For these reasons, it is respectfully urged that this petition for rehearing be granted and that the judgment of the Circuit Court of Appeals for the Seventh Judicial Circuit be, upon further consideration, affirmed.

Respectfully submitted,
EDWIN S. MACK,
ARTHUR W. FAIRCHILD,
J. GILBERT HARDGROVE,
Counsel for Respondent.

CERTIFICATE OF COUNSEL.

I, Edwin S. Mack, one of the counsel for the above named respondent, do hereby certify that the foregoing petition for a rehearing of this case is presented in good faith and not for delay.

EDWIN S. MACK,
Counsel for Respondent.

(643)

We join in the foregoing certificate
ARTHUR W. FAIRCHILD,
J. GILBERT HARDGROVE

PETITIONER'S BRIEF

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In The

Supreme Court of the United States

October Term, A. D. 1928.

No. 711

J. R. WHEELER,

Petitioner,

v.

HOWARD GREENE, RECEIVER OF THE BANKERS JOINT STOCK LAND BANK OF MILWAUKEE, WISCONSIN,

Respondent.

BRIEF OF PETITIONER IN OPPOSITION TO MOTION FOR REHEARING.

Two briefs have been filed upon the petition for rehearing. We will consider first the brief of the Receiver of the Bankers Joint Stock Lank Bank of Milwaukee.

GROUNDS FOR REHEARING.

The grounds for rehearing alleged are:

I. That Joint Stock Land Banks Are Not Relatively Local Affairs.

The answer to this is found in *Section 818, Chapter 7, Title 12, U. S. Code Annotated,* which provides as to loans to be made by Joint Stock Land Banks:

> "provided, however, that no loans shall be made which are not secured by first mortgages on farm lands within the state in which such Joint Stock Land Bank has its principal office, or within some one state contiguous to such state."

Section 961, Chapter 7, Title 12, U. S. C. A., which is the section under which the receiver of the Farm Loan Board derives his power, is concerned solely with the insolvency of farm loan associations. It is only by virtue of *Section 963* that Joint Stock Land Banks are liquidated by the same proceedings. *Section 963* provides that:

> "upon default of any obligation, Federal Land Banks and Joint Stock Land Banks may be declared insolvent and placed in the hands of a receiver by the Federal Farm Loan Board, and proceedings shall thereupon be had in accordance with the provisions of this section regarding National Farm Loan Associations."

Counsel's argument that Joint Stock Land Banks are not relatively local affairs must also apply to Farm Loan Associations. Farm Loan Associations must be organized by persons desiring to borrow money on farm mortgage security located in one of the Federal Land Bank districts *(Section 711, Chapter 7, Title 12, U. S. C. A.)* Its directors and all officers must be bona fide residents of the territory within which the association is authorized to do business *(Section 713)*. The Federal Farm Loan Board shall designate the territory in which such association may make loans *(Section 719)*. This is a purely local affair organized by owners of farm property.

II. That the United States has at Least as Great an Interest in Seeing the Bonds of Joint Stock Land Banks Paid as in the Case of National Bank Notes.

The bonds of Joint Stock Land Banks do not constitute obligations of the government in any way. None of them are held by the Federal Government. They are owned solely by private investors, largely by those interested in the tax free exemption of the bonds. There is no distinction between them and railroad, telegraph or telephone bonds so far as the public governmental interest is concerned. The government is interested in the operation of all of these public utilities, and would suffer much more from the cessation of business of one of these corporations than it would from the cessation of the business of a Joint Stock Land Bank and yet one could hardly claim that the government should enforce payment of the bonds of an insolvent public utility. The interest of the government in either of the two classes of corporations is not comparable with its interest in the national currency.

III. That the Omission of the Grant of Power to Enforce the Individual Liability of Stockholders from Section 29 Does Not Curtail the Powers of the Federal Farm Loan Board.

This subject has been so thoroughly argued before the court and in the briefs that it need not be discussed here, as nothing whatever new is mentioned in the brief.

IV. That Ancillary Suits in Receivership Would Be Required in Numerous Jurisdictions.

This question was argued exhaustively in the briefs, and nothing new is offered upon this point.

THE BRIEF OF AMICI CURIAE.

A brief has been filed on behalf of the receiver of the Kansas City Joint Stock Land Bank and the receiver of the Ohio Joint Stock Land Bank without the consent of the petitioner herein. It covers principally the same points already considered by the court.

The point argued under paragraph I is that the interest of the United States Government has not been fully presented nor considered.

Point II is that the government's views should be presented through its proper official.

The interest of the government and the extent of the investment in farm loan securities has been specifically called to the attention of this court, and the government's views have been presented through its duly authorized officials, the Federal Farm Loan Board and its receiver. The Board has its general counsel and a corps of attorneys who have been active in this litigation from the beginning. Its general counsel sat in the argument of this case before this court, and every move in the entire litigation has been supervised and approved by the government's representatives. It is impossible to conceive how the government could be more fully represented than it has been.

Paragraph III of the brief argues that the shareholders' liability should constitute an asset of the bank and should be enforceable by the Farm Loan Board, and that special provisions of the act indicating this intent on the part of Congress has not been called to the attention of the Court. Reference is thus made in *Section 966* which

applies solely to the liquidation of Farm Loan Associations, and reads as follows:

> *Section 966, Chapter 7, Title 12, U. S. C. A.* "LIQUIDATION OF FARM LOAN ASSOCIATIONS; CANCELLATION OF STOCK AND ISSUE OF NEW STOCK TO BORROWERS; PERSONAL LIABILITY OF STOCKHOLDERS. Upon liquidation of any national farm loan association, the stock in the Federal land bank held by such association shall be canceled and the Federal Land Bank shall thereupon issue to the borrowers through such association an amount of stock in the Federal Land Bank equal to the amount of stock held by such borrowers in the liquidated association, such stock to be held by the bank as collateral to the loans of such borrowers and to be paid off and retired at par in the same manner as stock held by borrowers in farm loan associations, and the Federal Land Bank shall pay to the borrowers holding such stock the same dividends as are paid to national farm loan associations by such bank. The personal liability of the stockholders in such liquidated association to the association shall survive such liquidation and shall be vested in the bank in that district, which may enforce the same as fully as the association could if in existence."

This section was thoroughly considered by all the parties to the litigation upon the arguments before the trial court, and at the argument before the Circuit Court of Appeals, and it was unanimously agreed that this section had no application whatever to the personal liability of stockholders based upon their stock ownership.

Section 742, Chapter 7, Title 12, U. S. C. A. provides:

> "Any person desiring to secure a loan through a national farm loan association under the provisions of this chapter, may at his option, borrow from the Federal Land Bank *through such association* the sum necessary to pay for shares of stock subscribed for

by him in the national farm loan association, such sum to be made a part of the face of the loan and paid off in amortization payments * * *".

Section 733, Chapter 7, Title 12, U. S. C. A. provides as follows:

"BORROWERS ONLY TO BE MEMBERS; AMOUNT OF STOCK TO BE HELD BY BORROWER; STOCK HELD AS COLLATERAL; RETIREMENT OF STOCK. No persons but borrowers on farm land mortgages shall be members or shareholders of national farm loan associations. Any person desiring to borrow on farm land mortgage through a national farm loan association shall make application for membership and shall subscribe for shares of stock in such farm loan association to an amount equal to 5 per centum of the face of the desired loan, said subscription to be paid in cash upon the granting of the loan. If the application for membership is accepted and the loan is granted, the applicant shall, upon full payment therefor, become the owner of one share of capital stock in said loan association for each $100 of the face of his loan, or any major fractional part thereof. Said capital stock shall be paid off at par and retired upon full payment of said loan. Said capital stock shall be held by said association as collateral security for the payment of said loan, but said borrower shall be paid any dividends accruing and payable on said capital stock while it is outstanding."

It thus appears that the shareholder of the Farm Loan Associations has a personal liability to the association for the amount of his mortgage, and if he has borrowed for the purpose of paying for his stock, for that amount as well. This is entirely separate and distinct from his personal liability as a shareholder of the association.

Section 966 specifically authorizes the transfer to the Federal Land Bank of the membership of the liquidated association, the stock of the Land Bank being issued to the borrowers in the same amounts that they held stock in the liquidated association. The bank thereafter deals directly with these borrowers. This means simply that the Land Bank takes the position of the liquidated association; that the notes and mortgages of the borrowers which run to the association are taken over by the bank, which may, of course, enforce the personal liability of the borrowers upon their notes. This section merely authorizes the assignment from the Farm Loan Association to the Federal Land Bank, and is in no way concerned with the double liability of stockholders upon their stock.

Paragraph IV of the brief refers to *Section 856* which authorizes the Farm Loan Board to call upon any land bank for additional security to protect the bonds issued by it, and argues that

> "when the bank becomes insolvent it clearly becomes the duty of the Farm Loan Board to make a requisition and assessment on the shareholders to the extent of their liability in order to provide the additional security to protect the bonds of the insolvent bank."

Section 856 was not intended to be used in cases of insolvency. Its purpose was to require any operating bank to furnish additional security when some of its collateral went wrong. It has no application to a case of a bank in liquidation.

Paragraph V of the brief is a statement that due consideration has not been given to *Clause j of Section 17* of the Act, *Section 831, U. S. C. A.*, giving the Federal Farm Loan Board incidental powers. This has been fully covered by the decision.

Paragraph VI of the brief claims that due consideration has not been given to the construction placed upon the Farm Loan Act by the Federal Farm Loan Board. This is the first time that this question has ever been considered by the Federal Farm Loan Board, so that no practice or construction has been developed or grown up with regard to it, and there would seem to be no reason why the construction of one party to the litigation should be accepted in preference to the construction of the other party.

Paragraph VII argues against the enforcement of the shareholders' liability through ancillary proceedings by a creditor's bill, a subject fully argued to the court.

Paragraph VIII claims that due consideration has not been given to the magnitude of the land bank system. The court has already been given the magnitude of the land bank system, and that was undoubtedly the basis for its granting the writ of certiorari herein.

Since the foregoing has been written a third brief has been received this 27th day of November, 1929, filed on behalf of the Bondholders Protective Committee of the Kansas City Joint Stock Land Bank. It confines itself to the argument that *Section 812, U. S. C. A.,* providing that the shareholders shall be held individually responsible for the contracts, debts and engagements of the bank, by reason of the use of the word "held" imposed upon the Farm Loan Board the active duty of enforcing the liability of shareholders. This same argument was made upon the hearing in this case, and was considered by the court.

It therefore appears that there is nothing new which has been called to the attention of the court in any of the three briefs, and that the arguments made are simply repetitions of the arguments presented to and considered by the court.

It is respectfully submitted that the petitions for rehearing should be denied.

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